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4                   UNITED STATES DISTRICT COURT  
5                   WESTERN DISTRICT OF WASHINGTON  
6                   AT TACOMA

7                   MYRON G. BRANDON,

8                   Petitioner,

v.

9                   SCOTT FRAKES,

10                  Respondent.

11                  No. C10-5687 RBL/KLS

12                  **REPORT AND RECOMMENDATION**  
13                  **Noted For: October 29, 2010**

14                  This habeas corpus action has been referred to United States Magistrate Judge Karen L.  
15                  Strombom pursuant to Title 28 U.S.C. §§ 636(b)(1) and Local MJR 3 and MJR 4. Petitioner  
16                  filed this action under 28 U.S.C. § 2254 challenging his 2000 conviction for Robbery in the First  
17                  Degree. Dkt. 1-1. His motion for leave to proceed *in forma pauperis* is pending. Dkt. 1.

18                  The court's records reflect that this petition is successive. Accordingly, the undersigned  
19                  recommends that this file should be administratively closed and the case transferred to the Ninth  
20                  Circuit in accordance with Circuit Rule 22-3(a).

21                  **DISCUSSION**

22                  Ninth Circuit Rule 22-3 (a) states:

23                  (a) Application. Any petitioner seeking leave to file a second or  
24                  successive 2254 petition or 2255 motion in district court must seek leave under 28  
25                  U.S.C. §§ 2244 or 2255. An original and five copies of the application must be  
26                  filed with the Clerk of the Court of Appeals. No filing fee is required. If a second  
                or successive petition or motion, or application for leave to file such a petition or  
                motion, is mistakenly submitted to the district court, the district court shall refer it  
                to the court of appeals.

Petitioner first filed a petition for writ of habeas corpus on September 22, 2004 in Case No. C04-5617KLS. (Dkt. 5 therein). That petition was dismissed without prejudice when Petitioner failed to show that he properly exhausted the issues raised in his petition. (Dkts. 49 and 50 therein). Prior to dismissal of his claims in that case, Petitioner filed another petition for writ of habeas corpus on June 10, 2005 in Case No. C05-5417FDB. (Dkt. 1 therein). That petition was denied on the merits and dismissed with prejudice. (Dkt. 26 therein).

On November 3, 2009, Petitioner filed another petition for writ of habeas corpus in Case No. C09-5689BHS. (Dkt. 1 therein). That petition was transferred to the Ninth Circuit pursuant to Circuit Rule 22-3(a). (Dkts. 3 and 7 therein).

The petition before this Court is also a “second or successive” petition and should be transferred to the Ninth Circuit Court of Appeals consistent with the dictates of Rule 22-3 (a).

#### CONCLUSION

Accordingly, the Court should transfer this habeas corpus petition as a second or successive petition and administratively close the file.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from service of this Report to file written objections. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on **October 29, 2010**, as noted in the caption.

DATED this 6th day of October, 2010.

  
Karen L. Strombom  
United States Magistrate Judge